No. 99-387

(2)

Supreme Court, U.S.
FILED
OCT 1 1999
OFFICE OF THE CLERK

In The

Supreme Court of the United States

THOMAS E. RALEIGH, Chapter 7 Trustee for Estate of William J. Stoecker,

Petitioner,

v.

STATE OF ILLINOIS, DEPARTMENT OF REVENUE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF *AMICUS CURIAE* FOR THE STATES OF NEW MEXICO, CALIFORNIA, MONTANA, NORTH DAKOTA, OHIO, OKLAHOMA, OREGON, SOUTH DAKOTA AND VERMONT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The *amici curiae* states, through their undersigned attorneys general, respectfully submit this brief in support of Thomas J. Raleigh's petition for certiorari.

INTEREST OF *AMICI CURIAE*

One of the primary law enforcement responsibilities of state government is ensuring that citizens comply with state tax laws. The decision below should be reviewed and affirmed in order to eliminate the conflict with several other decisions that significantly, unfairly and erroneously hamper the enforcement of those laws.

At issue is whether a taxpayer who has the burden of proof under state law can switch the burden to the government by filing for bankruptcy. This is not a rare or unusual situation. Approximately 1.4 million bankruptcies are filed annually in the United States. An enormous amount of tax revenues are subject to the review and control of the bankruptcy courts.

On several occasions, this Court has noted that burden of proof is an issue of substantive law. It will often determine the prevailing party in a legal proceeding. In the tax context, the rule of requiring the taxpayer to bear the burden of proof is essential and promotes the policies of tax administration. The alternative of requiring the government to disprove a claimed deduction of the taxpayer, for instance, would not only be impractical, it would seriously undermine the companion laws requiring taxpayers to keep adequate documentation. Moreover, the government's relative lack of knowledge of the

particulars of the taxpayer's financial affairs makes placing the burden of proof on the taxpayer necessary and eminently fair. If the burden is placed on the government in bankruptcy cases, it will result in forum shopping and substantial losses of much-needed tax revenue.

SUMMARY OF ARGUMENT

1. The court below correctly determined that in a bankruptcy proceeding the party seeking to refute the tax assessment has the ultimate burden of proving its claim. The court succinctly stated that "bankruptcy is not a 'free for all balancing act.' " *In re Stoecker*, 179 F.3d 546, 551 (7th Cir. 1999) (citation omitted). The Seventh Circuit's decision to apply the state law burden of proof to Illinois' tax claim is wholly consistent with both federal statutory and common law and with this Court's decisions. *See* 28 U.S.C. § 1652 (state law provides the "rules of decision in civil actions" in which state law is decided in federal court); *Butner v. United States*, 440 U.S. 48 (1979) (Unless Congress specifically states otherwise, the basic rule in bankruptcy is that state law determines the substantive rights of the parties). Moreover, the decision below is in harmony with Congress' intent that these tax claims be paid as shown by the priority and exception from discharge afforded those claims. However, as the petitioner correctly points out to the Court on page 6 of his petition, five different courts of appeal, and many other lower courts, have reached the opposite conclusion; the decision below, on the other hand, is consistent with two other courts of appeal and various lower courts.

2. If the opinion of the court below is not reviewed and affirmed by this Court, and the numerous contrary opinions were left to stand, the majority of circuits would continue to administer a rule of law which seriously disrupts the administration of tax laws by placing on governmental entities an unfair burden that does not exist outside bankruptcy courts. Because the burden of proof is more beneficial to taxpayers in some circuits' bankruptcy courts than in the state courts on tax matters, the bankruptcy courts in those circuits will often reach a different conclusion than the state courts on the ultimate issue of liability. Such result is directly contrary to the doctrine of comity and federalism with regard to state law determinations in federal courts. *See Erie Railroad Co. v. Tomkins*, 304 U.S. 64 (1938). Moreover, since the bankruptcy forum has been rendered more favorable for taxpayers in some circuits than the non-bankruptcy forum, the continued split of authority will engender forum shopping, both between bankruptcy courts and state courts and between bankruptcy courts in some circuits and bankruptcy courts in other circuits.[1] The result will "funnel people with tax problems into the bankruptcy courts, and thus undermine the enforcement of state tax

[1] Bankruptcy venue can be manipulated. 28 U.S.C. § 1408(1) provides that state of incorporation is an appropriate venue and § 1408(2) provides that venue is appropriate where the bankruptcy case of a partner, partnership or affiliate is pending. A venue shopper merely has to incorporate an affiliate in the jurisdiction of the desired bankruptcy court, put the affiliate in bankruptcy, and then file all other affiliates or partners in that jurisdiction.

law." *Thinking Machines v. New Mexico Taxation and Revenue Department*, 211 B.R. 426, 431 (D. Mass. 1997).

ARGUMENT

Three years ago, the Court was asked to take certiorari in the case of *In re Macfarlane*, 83 F.3d 1041 (9th Cir. 1996) *cert. denied* 520 U.S. 1115 (1997) in order to resolve this split of authority. While the Court ultimately decided that *Macfarlane* was not the vehicle through which to resolve this dispute, the split of authority remains and has continued to recur. The opinion below is well-suited for certiorari review to eliminate this conflict.

In *Macfarlane*, the Ninth Circuit Court of Appeals, in an opinion directly contrary to the one below, ruled that the ultimate burden of proof is switched to a taxing authority if the claim is litigated in bankruptcy court, whereas outside of bankruptcy the taxpayer generally carries the burden. Twenty-four states filed an *amici curiae* petition asking the Court to grant certiorari in that case. The Court invited the Solicitor General to file an *amicus* brief. *Macfarlane v. California Franchise Tax Board*, 519 U.S. 925 (1995). The Solicitor General's brief agreed with *amici* States, regarding the importance of the issue and the need for review. However, the Solicitor General advised the Court that the case was not an appropriate vehicle for resolving this important issue because the Ninth Circuit did not have proper jurisdiction of the case in that the court had assumed jurisdiction over an interlocutory matter pursuant to the statute governing appeals of final judgments. Perhaps agreeing with the Solicitor General

on the jurisdictional issue, the Court denied certiorari on March 17, 1997. There does not appear to be any potential jurisdictional problem in the Seventh Circuit's opinion below.

In this case, the state of Illinois imposed a use tax on a responsible officer (the president) of a corporation relating to the purchase of an airplane, and filed a proof of claim in the bankruptcy court for the tax assessment against the officer ("Stoecker"). Under Illinois law, Stoecker had the burden of proof. The trustee for Stoecker's estate objected to the claim. In light of the fact that Stoecker was under criminal indictment for federal bank fraud,[2] and was taking the Fifth Amendment in response to discovery, neither the state of Illinois nor the trustee could adequately prove nor disprove Stoecker's willfulness with regard to the corporation's non-payment of the use tax with respect to the purchase of the $12 million airplane. The airplane's purchase was never reported on any tax forms provided to the state, nor was the airplane ever registered with the state as required by state statute. The court below correctly noted that "the burden of proof [was] critical" to the outcome. 179 F.3d at 551. The bankruptcy court and district court ruled that the burden of proof was switched to Illinois due to the litigation occurring in bankruptcy court, and entered judgment for the trustee. The court below reversed, and ordered that judgment be entered for the state.

The Bankruptcy Code does not address the issue of burden of proof when claims are litigated in bankruptcy

[2] *In re Stoecker*, 202 B.R. 429, 458-59 (Bankr. N.D. Ill. 1996).

court. In the most general terms possible, Congress has stated only that, "if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency. . . . " Code § 502(b). Similarly, Code § 505(a)(1) permits the court to "determine the amount or legality of any tax. . . . " Bankruptcy courts are units of the United States district courts. 28 U.S.C. § 151. The Rules of Evidence apply in the bankruptcy courts. Federal Rule of Evidence 101.

Under 28 U.S.C. § 1652, the state law provides the rules of decision in cases where state law is to be determined in federal court. As a general, and well recognized, matter of tax law the ultimate burden of persuasion is placed on the taxpayer. *E.g., See Stohr v. New Mexico Bureau of Revenue*, 90 N.M. 43, 559 P.2d 420 (Ct. App. 1976).[3] Although the tax at issue in the instant case is a use tax, the law is generally the same with regard to other state revenue sources, such as sales, gross receipts and excise taxes. *See*, NMSA § 7-9-5 (receipts from engaging in business in New Mexico presumed taxable). Federal Rule of Evidence 301 provides that the ultimate burden of persuasion "remains throughout the trial upon the party

[3] *See also, e.g.*, N.C. Gen Stat. § 105-164.26 (presumed that all receipts of wholesalers and retailers are subject to sales tax); *Ward v. Clayton Comm'r of Revenue*, 5 N.C. App. 53, 60, 167 S.E. 2d 809 (1969), *aff'd*, 172 S.E.2d 531 (taxpayer has the burden of proving deductions); N.J.S.A. §§ 54:32B-12(b) (all sales presumed taxable), 54A:9-9(e) (taxpayer has burden of proof with certain exceptions); Iowa Code § 421.60(6) (Code Supp. 1995) (taxpayer has the burden of proof); *Patterson v. Heitkamp*, 442 N.W.2d 219 (N.D. 1989) (taxpayer has burden of proof); *Appeal of Net Realty Holding Trust*, 128 N.H 795 (1986) (taxpayer has the burden of proof).

on whom it was originally cast." Rule 302 provides that the effect of any presumption arising under state law is to be determined by state law.

Acknowledging that its opinion was directly contrary to *Macfarlane, supra*, the court below ruled that the trustee had the burden of proof because that is the rule under Illinois law. 179 F.3d at 552. There is a direct conflict among the circuits and in the lower courts as the petitioner accurately states. Because of this conflict and because the contrary result of many courts impairs state tax collections and transform the bankruptcy courts into the preferred forum for state and federal taxpayers to obtain a favorable determination of tax disputes,[4] the Court should grant certiorari.

I. THE COURT SHOULD GRANT CERTIORARI BECAUSE OTHER CIRCUITS HAVE REACHED CONTRARY DECISIONS WHICH CONFLICT WITH THE UNDERLYING PRINCIPLES OF *BUTNER V. UNITED STATES*, 440 U.S. 48 (1979) AND 28 U.S.C. § 1652 AND WITH CONGRESS' GRANTING STATUTORY PRIORITY TO TAX CLAIMS

The decision below is in harmony with the long-standing principle that non-bankruptcy law governs the rights of creditors. As this Court has noted time and time

[4] There is nothing preventing a debtor from filing a bankruptcy petition for no other reason than to obtain a favorable forum to litigate a tax problem. Code § 1307(b) provides a Chapter 13 debtor the absolute, non-waiveable, right to dismiss a bankruptcy petition, which the debtor could do subsequent to litigating his tax dispute.

again, burdens of proof are part of the substantive law of the state. *E.g., Dick v. New York Life Ins. Co.*, 359 U.S. 437 (1959); *Palmer v. Hoffman*, 318 U.S. 109 (1943); *Cities Service Oil Co. v. Dunlap*, 308 U.S. 208 (1939). Consistent with those cases, this Court has ruled that when a federal claim is tried in state court, the state court must apply the federal law burden of proof, noting it "was a part of the very substance of his claim and cannot be considered a mere incident of procedure." *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 248-49 (1942). *See also, Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 271 (1994).

This Court has long held that the converse is equally true in the bankruptcy courts when they apply state law in the federal arena. "Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." *Butner v. United States*, 440 U.S. 48, 55 (1979). The Court noted that the "basic rule" in bankruptcy proceedings "is that state law governs." *Id.* at 57. "What claims of creditors are valid and subsisting obligations against the bankrupt at the time a petition in bankruptcy is filed, is a question which, in the absence of overruling federal law, is to be determined by reference to state law." *Vanston Bondholders Protective Comm. v. Green, et al.*, 329 U.S. 156, 161 (1947). *See generally*, Alfred Hill, *Erie Doctrine in Bankruptcy*, 66 Harv. L. Rev. 1013 (1953) (cited with approval in *Butner*, 440 U.S. at 52 n.2).

Whether a liability exists is often determined by which party had the burden of establishing certain claims

or defenses, which is why that burden is considered "a part of the very substance of [the] claim." *Garrett*, 440 U.S. at 55. Debtors who are able to file bankruptcy in those circuits that switch the burden of proof for tax litigation, therefore, receive "a windfall merely by reason of the happenstance of bankruptcy." *Lewis v. Manufacturers National Bank*, 364 U.S. 603, 609 (1961). As was concisely stated by one bankruptcy court: "To rule [in favor of the taxpayer] would permit a tax litigant to shift the burden of proof to the [taxing authority] by filing bankruptcy." *In re Cobb*, 135 B.R. 640, 641 (Bankr. D. Neb. 1992).

The foundation upon which the contrary line of authority is built is a so-called "broad rule that taxing authorities are to be treated the same as other claimants *and must therefore bear the ultimate burden of proving their claims in bankruptcy.*" *Macfarlane, supra*, 83 F.3d at 1045 (emphasis added). The problem here is that, upon a careful analysis, there is no "broad rule" that all claimants "bear the ultimate burden of proving their claims in bankruptcy." Granted, it is *generally* true that claimants – as creditors and therefore the functional equivalent of plaintiffs under non-bankruptcy law[5] – usually bear the burden of proof in bankruptcy as they would outside of bankruptcy. However, in a variety of circumstances

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[5] *See In re Thinking Machines*, 203 B.R. 1, 2 (Bankr. D. Mass. 1996), *modified*, 203 B.R. 426 (D. Mass 1997) ("Courts routinely rule . . . that the ultimate burden of proof rests upon the claimant. This is intended to place the claimant in the same position it would have been had the claimant been a plaintiff in a civil action. The application of this rule is problematic when the claimant is a taxing authority.").

courts have had little difficulty ruling that where non-bankruptcy law places the burden of proof on the debtor, the debtor retains the burden of proof even in a claim objection proceeding or similar matter. *In re Unioil*, 962 F.2d 988, 994 (10th Cir. 1992) (since party seeking to prove an accord and satisfaction has the burden of proof under Colorado law, the debtor had the burden of proving an accord and satisfaction in a claim objection proceeding); *In re Andover Togs, Inc.*, 231 B.R. 521, 530-31 (Bankr. S.D.N.Y. 1999) (in an administrative claim objection proceeding, debtor/tenant had the burden of proving that provisions in the lease were unenforceable due to laches or equitable estoppel, because New York law places the burden of proving those issues on the party asserting them); *In re Farris*, 194 B.R. 931 (Bankr. E.D. Pa. 1996) (debtor had the same burden of proving likely Truth in Lending Act violation under non-bankruptcy federal law as any other party raising this defense); *In re El Paso Refining, Inc.*, 192 B.R. 144 (Bankr. W.D. Tex. 1996) (in claim objection proceeding in which debtor was a guarantor of a debt, court adopted non-bankruptcy caselaw and ruled that the debtor had the burden of proving that the debt between the creditor and the primary obligor had been satisfied); *In re Brummer*, 147 B.R. 552 (Bankr. D. Mont. 1992) (debtor had burden of proving debt was usurious under Montana law); *In re Biglari Import Export, Inc.*, 130 B.R. 43 (Bankr. W.D. Tex. 1991) (in claim objection proceeding, where creditor had seized collateral prior to the petition being filed, debtor had the burden of proving that the creditor did not exercise reasonable care with regard to repossessed collateral since Texas law put burden of proving this issue on the debtor); *In re Wills*,

126 B.R. 489, 497 (Bankr. E.D. Va. 1991) (summary judgment entered for creditor in claim objection proceeding because debtor had the burden of proving by clear and convincing evidence under Virginia law that contractual debt could be avoided on grounds of incapacity of the debtor at the time of signing the contract); *In re Woehr*, 121 B.R. 743 (N.D. Tex. 1990) (debtor had burden of proving debt usurious under Texas law); *In re Hood*, 95 B.R. 696, 702 (Bankr. W.D Mo. 1989) (debtor had the burden under Missouri law of proving that contract was entered into under duress); *In re Borum*, 60 B.R. 516 (Bankr. E.D. Ark. 1986) (debtor had the burden of proving usury under Arkansas law). *See also, In re Niles (Otto v. Niles)*, 106 F.3d 1456 (9th Cir. 1997) (state law that places burden of proof on fiduciary to properly account for funds held in trust was equally applicable in discharge action); *Thomson v. Boswell*, 166 F.2d 106, 108 (6th Cir. 1948) (in a railroad reorganization proceeding, the estate was liable in an accident involving a passenger vehicle on the train tracks because Arkansas law required the railroad operator to affirmatively prove that it maintained an adequate lookout). The above decisions reflect the proper respect for the substantive law applicable to these issues, as does the decision of the court below.

The real driving force of opinions like *Macfarlane*, is the concept that since tax liabilities receive certain priorities in bankruptcy court, the courts should make it more difficult to establish those liabilities than under applicable non-bankruptcy law. The *Macfarlane* court explained at 83 F.3d 1045: "Since tax claims already receive a statutory priority over other claims, relieving the Board of its burden of proof would be granting the Board a double

benefit. . . . " This reasoning is faulty. The *Macfarlane* court missed the point, when it discussed "relieving the Board of *its* burden of proof," that said burden of proof is one which courts have created to begin with and which does not exist under nonbankruptcy law. By fashioning its result as denying a "double benefit" or refusing to "relieve" the taxing authority of "*its* burden of proof," *Macfarlane* avoided the more accurate characterization of this ruling: creating equitable impediments for a certain class of creditors based upon the notion that Congress has given them too much. The court below accurately characterized the *Macfarlane* line of cases as "cut[ting] down the entitlements that creditors seek to enforce in bankruptcy," and "[a]n equity free-for-all [which] would engender confusion and uncertainty and increase the strategic incentives to petition for bankruptcy. . . . " 151 F.3d at 551.

As the court below recognized, this Court recently ruled that equity does not go so far as to permit an invasion by the courts into the legislative function. *U.S. v. Noland*, 517 U.S. 535, 539-541 (1996). There is simply no basis in law or logic for courts to eliminate one benefit which the law provides to a creditor because Congress has also provided the creditor with a different benefit. Indeed, if the court below had not reversed the district court, the decision would not have denied Illinois *only one* of its benefits. If the court below had ruled, as did the bankruptcy and district court, that *Stoecker* had no tax liability, the court would have made the priority and exception from discharge benefits which Congress provided to Illinois with respect to those types of taxes irrelevant.

In any event, the choice as to how to allocate benefits and detriments is up to Congress, not the courts. Indeed, in many respects, the Code provides *less* favorable treatment to the governmental taxing authority than under non-bankruptcy law. In state-court receivership proceedings, for instance, state and federal taxes are not paid eighth as they are under the bankruptcy code, Code § 507(a)(8), they are generally paid first. *N.M. College of Agric. & Mechanic Arts v. Academy of Aviation, Inc.*, 83 N.M. 86, 488 P.2d 343 (1971). Taxes can be, and indeed often are, discharged under the bankruptcy code unless they fall within a recognized exception. *See* Code §§ 523(a)(1) (providing an exception to discharge for some tax liabilities), 727(b) (providing that a chapter 7 discharges all debts not within a § 523 exception), 1328(a) (providing no exception to discharge for tax liabilities; tax liabilities completely dischargeable in chapter 13)[6] and 1141(d) (no exception to discharge for tax liabilities in Chapter 11 if debtor is a corporation). Tax liens can sometimes be subordinated, Code § 724(b) or avoided altogether, Code § 545. Certain state taxes can be barred by confirmation of a Chapter 11 plan, Code § 1146(c). However, in each of these situations, Congress has been very explicit as to the choice it has made.

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[6] Although Code § 1322(a)(2) requires that certain "priority" taxes (*e.g.*, trust fund taxes or recently incurred income taxes) must be paid in full over time without interest, reported cases to date have held that a confirmed plan may nevertheless eliminate even those taxes without any payment if a plan which purports to do so is confirmed or the taxing authority misses a proof of claim deadline. *See In re Tomlan*, 102 B.R. 790 (E.D. Wash. 1989), *aff'd*, 907 F.2d 114 (9th Cir. 1990) (collecting cases). *See also, In re Lee*, 184 B.R. 257 (W.D. Va. 1995).

The basis of taxation in this country, both at the state and federal level, is voluntary compliance, which involves requiring the taxpayer to accurately and honestly report his business transactions and to maintain and retain records substantiating his position in the event of any contest of the tax liability. One reason Congress has given a higher statutory priority to taxes than, for instance, debts owed to trade creditors, is that taxing authorities cannot choose to whom they extend credit and to whom the government extends services, let alone vary interest rates based upon the risk of default or the quality of the collateral. And unlike other involuntary creditors, such as tort claimants, there is seldom any insurance policy to which the government can resort to collect the involuntarily incurred debt. The reason for giving taxes some special protections in bankruptcy is clearly a reasoned judgment of Congress, and it should be respected. The opinion below does so and should be affirmed on that basis.

II. THE COURT SHOULD GRANT CERTIORARI BECAUSE THE CURRENT SPLIT OF AUTHORITY COULD WREAK HAVOC ON STATE TAX ADMINISTRATION AND PROMOTE FORUM SHOPPING IN TAX CASES

Cases frequently arise in bankruptcy court where an audit discovers unreported tax liability. If the taxpayer is in bankruptcy, he may make thinly-substantiated statements as to its expenses or as to the nature of its sales activity, and assert that the taxing authority has to disprove these assertions. As in the case below, disproving a taxpayer's assertions can be virtually impossible. In a

non-bankruptcy tax proceeding, taxpayers' assertions of fact that are not backed by documentation are given little weight. In many circuits' bankruptcy courts, however, assertions may be enough. The result is that in several circuits, the congressional protections given to tax liabilities in bankruptcy court are rendered illusory whenever there is any dispute as to the amount of those liabilities.

If Mr. Stoecker had been assessed and exercised his administrative remedies under Illinois law prior to filing bankruptcy, he would, of course, have been subject to the Illinois standards of proof. Whatever resulted from that proceeding would be binding upon the bankruptcy court. Code § 505(a)(2)(A). *See In re Trans State Outdoor Advertising Co.*, 140 F.3d 618 (5th Cir. 1998). The resulting liability would have been subject to the priority and discharge provisions of bankruptcy code. The opinion below eliminates the strategic incentive to file bankruptcy instead of exercising one's administrative remedies under substantive tax law. Unfortunately, other courts do provide such an incentive, because the more favorable burden of proof in some bankruptcy courts on tax issues will provide a more favorable forum for the taxpayer to litigate with the government as to the extent of their liability. This cannot be what Congress intended when it enacted the innocuous phrase "the court may determine the amount . . . of any tax" in Code § 505(a)(1). Indeed, the relationship between Code § 505(a)(1) (court may determine tax liability) and § 505(a)(2)(A) (court may not determine tax liability if the tax was contested in a judicial or administrative proceeding prior to bankruptcy) would lead to the ordinary conclusion that Congress intended that there

should be no difference in the analysis or the outcome when taxes are litigated in bankruptcy.

Moreover, it is doubtful that Congress intended the anomalous situation in which the very same claim adjudication proceeding would be subject to different burdens of proof depending upon whether the bankruptcy court abstained from hearing the proceeding and deferred to a state adjudication, which the law permits in some circumstances and requires in other circumstances. *See* 28 U.S.C. § 1334(c).[7]

The ruling below, that a court should not interpret federal law as creating equitable impediments to state tax law, is directly supported by this Court's precedent. In *National Private Truck Council, Inc. v. Oklahoma Tax Commission, et al.*, 515 U.S. 582 (1995), the Court noted that federal laws must be construed against "the background presumption that federal law generally will not interfere with administration of state taxes. . . . " *Id.*, at 588. The Court noted that "Congress and [the Supreme Court] repeatedly have shown an aversion to federal interference with state tax administration." *Id.*, at 586. In the bankruptcy context, this Court has referred to 28 U.S.C. § 960, although not directly applicable in that particular proceeding, as indicating "a Congressional purpose to

[7] Under the doctrine enunciated by some courts, such as *Macfarlane*, a debtor could oppose an abstention motion on the basis that the debtor is more likely to lose in a state proceeding! Such a rationale, while absurd, seems to be dictated by the *Macfarlane* court's decision based upon the purported "policy considerations that underlie the bankruptcy code," 83 F.3d at 1045.

facilitate – not to obstruct – enforcement of state laws." *Cal. Bd. of Equalization v. Sierra Summit*, 490 U.S. 844, 852-53 (1989). In *Sierra Summit*, the Court reversed the Ninth Circuit which ruled that bankruptcy sales were not subject to state sales tax. The court of appeals had ruled that since 28 U.S.C. § 960 did not specifically make the sales subject to tax, federal bankruptcy principles of equity required that they not be taxed. The Supreme Court ruled that the court of appeals erred in ruling that the existence of one statute benefiting state taxes indicated that all other legal benefits in bankruptcy court were implicitly eliminated. The Court concluded that "[i]f Congress wished to declare otherwise, its intent would have to be 'clearly expressed, not left to be collected or inferred from disputable considerations of convenience in administering the estate of the bankrupt.' " *Id.*, at 854. *Compare Macfarlane*, 83 F.3d at 1045 ("In the absence of statutory directive, we consider it appropriate to turn to policy considerations that underlie the bankruptcy code.") *with Stoecker*, 179 F.3d at 552 ("Congress can alter the entitlements in bankruptcy, and sometimes does so, but there is no indication that it meant to shift the burden of proof from taxpayer to tax collector. Rather the contrary . . . [T]he close attention that the drafters of the Code paid to issues of burden of proof [in other instances] makes their silence on the burden of proof in tax cases eloquent.").

CONCLUSION

For all of the foregoing reasons, *amici* States respectfully request that the Court grant certiorari in this case.

Respectfully submitted,

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